

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HEATHER MARIE BATES,

Plaintiff,

DECISION AND ORDER

15-CV-6416L

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

Pending before the Court is a motion by counsel for plaintiff, a prevailing party in this action for Social Security benefits, for an order awarding attorneys fees pursuant to 42 U.S.C. §406(b)(1). (Dkt. #23). Pursuant to a contingent fee agreement with plaintiff providing for attorneys' fees in the amount of 25% of any award recovered by plaintiff, plaintiff's counsel, Timothy Hiller, seeks fees in the amount of \$13,242.50, which constitutes 25% of the past due benefits awarded to plaintiff.

By Stipulation and Order entered March 13, 2017 (Dkt. #22), this Court previously awarded plaintiff attorneys' fees under the Equal Access to Justice Act (EAJA), 28 USC §2412(d), in the amount of \$6,500.00.

The Commissioner does not oppose plaintiff's motion. (Dkt. #26).

I find that the amount of the requested fee is reasonable, in light of the character of the representation, the time required, plaintiff's counsel's expertise in Social Security law, the result that was achieved, and the absence of any delay in the proceedings by counsel. *See Silliman v. Barnhart*, 421 F. Supp.2d 625 (W.D.N.Y. 2006); *Joslyn v. Barnhart*, 389 F.Supp.2d 454

(W.D.N.Y.2005). In so finding, the Court has considered the deference that is owed to agreements between an attorney and client, the interest in assuring future representation for disability claimants, and the lack of any factor indicating that the requested award would result in a windfall. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 802 (2002).

CONCLUSION

Plaintiff's motion for attorney's fees pursuant to 42 U.S.C. §406(b) (Dkt. #23) in the amount of \$13,242.50 is granted. Per the Supreme Court's directive in *Astrue v. Ratliff*, 560 U.S. 586, 589 (2010), the award is to be made payable to plaintiff, Heather Marie Bates, and shall be delivered or mailed to her counsel, Timothy Hiller. After payment, plaintiff is directed to remit the fees and costs owed to her counsel pursuant to their fee agreement. Plaintiff's counsel is directed to refund to plaintiff the amount of previously-awarded EAJA fees (Dkt. #20), if he has not already done so.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 8, 2019.